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United States Patent & Trademark Office; U.S. DEPARTMENT OF COMMERCE

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 59864.00524
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]		Application Number: 09/834,918
on _____		Filed: April 16, 2001
Signature _____		First Named Inventor: Franck LE
Typed or printed Name _____		Art Unit: 2121
		Examiner: Sunray Chang

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ Applicant/Inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under
37 CFR 3.73(b) is enclosed

☒ Attorney or agent of record.
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Reg. No. is acting under 37 CFR 1.34 _____

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January 13, 2006

Date

NOTE: Signatures of all of the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Franck LE et al.

Art Unit: 2121

Application No.: 09/834,918

Examiner: Sunray Chang

Filed: April 16, 2001

Attorney Dkt. No.: 59864.00524

For: METHOD AND APPARATUS FOR CLASSIFYING IP DATA

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

January 13, 2006

Sir:

Applicants respectfully request a review of the final rejections set forth in the final Office Action dated September 27, 2005, finally rejecting claims 1-37. Applicants submit that a prima facie case for anticipation and obviousness has not been established, and that there is clear error with regard to at least one element of each of the independent claims.

The final Office Action rejected independent claims 1, 13, and 25 under 35 U.S.C. §102(e) as being anticipated by Walrand (U.S. Patent No. 6,674,760). Applicants respectfully submit that this rejection is in clear error since Walrand fails to disclose or suggest all of the elements of the presently pending claims.

Specifically, Applicants submit that Walrand does not disclose or suggest receiving data at a first node, the data comprising a header comprising a list of at least one intermediate node to be visited on a way to the destination apparatus, as recited in present claims 1, 13, and 25. Walrand only discloses that the network communicates data through the use of IP packets, each of which include an IP header 200 (see Figure 2). Walrand further discloses that the IP header may include a source address field 208, a destination address field 210, and a type of service field 206 (Walrand, Column 3, lines 15-27). However, Walrand makes no mention of a list of intermediate nodes included in the IP header. As a result, Walrand certainly does not disclose or suggest that a list of at least one intermediate node that should be visited on the way to the destination apparatus is included in the header. Therefore, Walrand does not disclose or suggest that the IP header includes a list of at least one intermediate node to be visited on a way to the destination apparatus, as recited in the present claims.

The final Office Action appears to take the position that the header disclosed in Walrand may specify which of the subnets the data is to visit. The Office Action refers to Column 2, lines 26-31 of Walrand, which states that data streams may be classified for both inter-subnet and intra-subnet connections using only information provided in the headers. As such, the Office Action concludes that Walrand teaches that the streams may be classified based on information provided in the header. However, Walrand does not disclose or suggest that the header specifies a specific subnet that is to be visited on a way to the destination apparatus. Therefore, Applicants respectfully submit that Walrand

fails to disclose or suggest receiving data at a first node, the data comprising a header comprising a list of at least one intermediate node to be visited on a way to the destination apparatus, as recited in present claims 1, 13, and 25. Accordingly, Walrand fails to disclose or suggest all of the elements of claims 1, 13, and 25, and, therefore, the final rejection is clearly improper and in clear error.

Applicants note that claims 8-12, 20-24, and 33-37, which were also rejected over Walrand, are dependent upon claims 1, 13, and 25, respectively. Therefore, claims 8-12, 20-24, and 33-37 should be allowed for at least their dependence upon claims 1, 13, and 25, and for the specific limitations recited therein.

The final Office Action rejected claims 2-4, 14-16, 26-28, and 29 under 35 U.S.C. §103(a) as being unpatentable over Walrand in view of Jorgensen (U.S. Patent No. 6,452,915). The Office Action took the position that Walrand discloses all of the elements of the claims, with the exception of the data for IPv6. The Official Action then relies upon Jorgensen as allegedly curing this deficiency in Walrand.

Claims 2-4, 14-16, 26-28, and 29 are dependent upon claims 1, 13, and 25, respectively. As discussed above, Walrand fails to disclose or suggest all of the elements of claims 1, 13, and 25. Furthermore, Jorgensen also does not disclose or suggest that the IP header includes a list of at least one intermediate node to be visited on a way to the destination apparatus and, therefore, fails to cure the deficiencies in Walrand with respect to claims 1, 13, and 25. Thus, claims 2-4, 14-16, 26-28 and 29 should be allowed for at

least their dependence upon claims 1, 13, and 25, and for the specific limitations recited therein.

The final Office Action rejected independent claims 5, 17, and 30 under 35 U.S.C. §103(a) as being unpatentable over Walrand in view of Jorgensen and further in view of Narad (U.S. Patent No. 6,157,955). Applicants submit that a *prima facie* case for obviousness has not been established, and that there is clear error with regard to at least one element of each of the independent claims.

Claims 5, 17, and 30 include the limitation of receiving data at a first node, the data comprising a header including a list of at least one intermediate node to be visited on a way to the destination apparatus. As discussed above in reference to claims 1, 13, and 25, Applicants respectfully submit that the combination of Walrand and Jorgensen fails to disclose or suggest this limitation of the claims. Furthermore, Narad also does not disclose or suggest this limitation of the claims, and therefore fails to cure the deficiency in Walrand and Jorgensen. Therefore, Applicants submit that Walrand, Jorgensen and Narad, whether considered alone or in combination, do not disclose or suggest that the header includes a list of at least one intermediate node to be visited on a way to the destination apparatus, as recited in claims 5, 17, and 30. In view of the above, Applicants submit that the final rejection is clearly improper as the combination of cite references fail to disclose or suggest all of the elements of claims 5, 17, and 30.

Claims 6-7, 18-19, and 31-32 are dependent upon claims 5, 17, and 30, respectively. As such, Applicants respectfully submit that claims 6-7, 18-19, and 31-32

should be allowed for at least their dependence upon claims 5, 17, and 30, and for the specific limitations recited therein.

Applicants respectfully assert that there is clear error in that the Office Action has failed to demonstrate that Walrand discloses all of the elements of claims 1, 13, and 25. Furthermore, the Office Action has failed to establish a prima facie rejection for obviousness, as the combination of the cited references do not disclose or suggest all of the elements of claims 5, 17, and 30. Therefore, for at least the reasons discussed above, Applicants respectfully request that the rejection of claims 1, 5, 13, 17, 25, and 30 be reconsidered and withdrawn. Additionally, the dependent claims should be allowable for at least the same reasons as claims 1, 5, 13, 17, 25 and 30.

Respectfully submitted,



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Enclosures: Notice of Appeal
Form PTO/SB/33
Petition for Extension of Time